O/Nego Instru/44

1944

File No.

Legal Department

A **BRANCH**

Subject:—

Opinions Under the Negotiable Instrument Act, 1881

E 1-3

O/Nego Instru/44

File No.

Gen. 194 e.

227-A

C O N T E N T S.

Legal Department File No.O.Nego. Instru/44

Sr.No.	Compilation No.	Subject.	Pages.
	O.NegoInstru. 1944.	Opinions under the Negotiable Instruments Act, 1881.	
1	H.I.No.957 2-2-44 O.M.-1599 1-3-44	American Consul should ask the attorney claiming to be a Notary Public for Bombay to produce his Commission in Support of his claim.	1-2
	O.M.43-P.Confl. 1-7-44.	Notice of intended suit Premchand Mulchand of Mulchand Shrichand & Co. for refused payment of cheque.	3-4

RMB.
9.7.

PHB 3/8

Nicol 3/8

L.P.R.I.No.
957
2-2-44.

Submitted.

2. Please see the letter from the American Consul at p.9 ante asking for a current list of persons who are legally authorised to function as Notaries Public at Bombay. A list of Attorneys is at pp.184-A to 184-R of the Bombay Civil List. (1st Jan. 1943) and those attorneys whose names are marked with an asterisk exercise the functions of NotaryPublic. It is suggested in the H.D. office note at p.11 ante that in replythe American Consul may be referred to the said list and that he may also be informed that he should ask the Attorney claiming to be a Notary Public for Bombay to produce his Commission (granted by the Notarial Faculty) in support of his claim.

3. It has been unofficially ascertained from the office of the Prothonotary & Registrar, High Court, Bombay that the list mentioned above is prepared by that office and is scrutinised by the Bombay Incorporated Law Society The replysuggested in the H.D. office note at pp.11-12 ante appears to be proper.

4. The papers maybe seen and returned.

Sd/- S.A.V.
11.2

S.A.S.

Please ascertain informally from the office of the Prothonotary and Registrar High Court whether these persons are notaries public appointed under the Negotiable Instruments Act by the Govt. of India (may be bythe Govt. of Bombay) and if so, whether they can exercise other functions of a not any public such as attesting deeds contracts and s other instruments that are to be used abroad (pl. see pp.28, 29 of Bhashyam's Negotiable Instrument Act).

Sd/-R.T.K. 12.2 Mr.Vora.

Resubmitted with reference to S.A.S's note overleaf.

2. It is unofficiallyascertained from the office of the Prothonotary and Registrar, High Court, that the Notaries Public mentioned in the Bombay Civil List (1st January 1943) are not appointed under the Negotiable Instruments Act bythe Govt. of India or bythe Govt. of Bombay but are so appointed by the Notarial Faculty in England by Commission; they are authorised to exercise all the functions of a notary public including attesting deeds contracts and other instruments that are to be used. abroad.

Sd/- S.A.V.
14-2

S.A.S. The reply proposed by H.D. in the concluding part of its office note at p.11 ante appears to be in order. Papers may therefore be seen and returned.

'A' Sd/- R.T.K.
15-2

A.L.R. Sd/- R.S.H.
19-2

R.L.A. Sd/- P.N.Moos
25-2-44

Legal Department.

Seen and returned.

Sd/- P.N.Moos
29-2-44
Secretary to Government.

U.R.to H.D.,No.1599, dated the 1st March 1944.

RHB.
9.7.

Office of the R.L.A.

It appears from the draft plaint at page 5 of the papers returned herewith the Mr. Premchand Mulchand xxx claims the amount as "eholder in due course" within the meaning of section 9 of the Negotiable Instruments Act, 1881. The cheque(at page 7 of the papers) drawn in favour of Mr. Premchand Mulchand's Bank is a forgery. Mr. Bhatkar is payable to order and the endorsement made in favour of

"No holder of a negotiable instrument, though he may be a holder in due course, can acquire a good title to the instrument through a forged endorsement. Section 58 of the Negotiable Instruments Act, which protects a holder in due course, where a negotiable instrument has been obtained bymeans of an offence, does not apply to a case of a forgery" (see Thoragpa v. Umedmalji, 25B.L.R. 604 at p.607). Consequently the endorsement in favour of Premchand Mulchand's Bank is a nullity and there can be no valid claim on such endorsement. The suit, if filed, would therefore be defensible.

Sd/- P.N.Hoon
30-6-44

Remembrancer of Legal Affairs.

On.No.43P.
1-7-44.

RHB.
9.7.